

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

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DATE: January 31, 2002

TO: Orange County Zoning Administrator

FROM: Planning and Development Services Department/Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA01-0113 for Use Permit

PROPOSAL: The applicant requests approval of a Use Permit per Orange County Zoning Code Section 7-9-146.5 to establish a second residential unit on his approximately 60,000 square foot 100-E4 "Small Estates"-20000 zoned lot. This proposal is in association with the construction of a new primary single-family dwelling on the site. The proposed second residential unit is a conversion of an existing 1,430 square foot, two-bedroom, one-story single-family residence. The second residential unit will be remodeled so as not to contain over 1,200 square feet of habitable living area, which is the maximum permitted under Zoning Code Section 7-9-145.6.

LOCATION: The site is located in an unincorporated County island in the City of Orange, east of Hewes St. and south of Villa Park Road. The site address is 19151 Lomita Avenue, Orange. Third Supervisorial District.

APPLICANT: Todd Deshler, property owner

STAFF William V. Melton, Project Manager

CONTACT: Phone: (714) 834-2541 FAX: (714) 667-8344

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA01-0113 subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The subject site is approximately 60,000 square feet in area, rectangular in shape, measuring approximately 280 feet on the south property line and 217 feet on the west property line. The site has two access points. The primary access point is private easement road, called Lomita Avenue, which runs the length of the eastern property line. The second access point is via a 20 feet wide private easement road/driveway at the northwest corner of the site, adjacent to the proposed second residential unit, that intersects Lomita Avenue to the south of the site. Lomita Avenue connects with Rancho Santiago Blvd. (a public road) to the west.

According to the applicant, the site was once used as a commercial orchid farm. The site is now being converted to a residential use consistent with zoning. The site has been cleaned and cleared of most of the old orchid farm buildings. Two of the buildings, the existing residential dwelling (proposed second residential unit) and a building in the center of the site will remain and used for garden storage. This

building was used as the office area for the orchid farm and presently contains two bathrooms, each with a sink and toilet.

The applicant proposes to construct a new two-story single family dwelling in the northeast portion of the site, a new 7+ car garage in the southwest corner of the site and convert the existing one-story residence into a second residential unit. A future swimming pool is planned to be located between the second residential unit, the new primary residential and the garden storage building. This Use Permit only addresses the proposed second residential unit and does not address permitting requirements of the proposed new dwelling or detached garage since both of these uses are permitted.

SURROUNDING LAND USE:

The subject site and all surrounding properties are Zoned 100-E4 “Small Estates”-20,000. Surrounding properties are developed with single-family dwellings except to the east, which is undeveloped steep hillside property (see Exhibit 2 air photos). It should be noted that the subject site is one of the largest lots in the vicinity.

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to six County Divisions and the Foothill Community Association.

As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions by staff. The Foothill Community Association did not provide comments.

CEQA COMPLIANCE:

The proposed project is Categorically Exempt (Class 2, replacement or reconstruction of similar type structures or use) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

DISCUSSION/ANALYSIS:

Second residential units, per Zoning Code Section 7-9-146.5, are permitted in any zone permitting a single-family dwelling subject the approval of a Use Permit. Four criteria need to be satisfied before a Use Permit for a second residential unit can be approved. These four criteria are shown below followed by a discussion of how the proposal conforms or will conform to the four criteria.

1. Accessory to a single-family dwelling
2. Cannot exceed 1,200 square feet of habitable living space if detached
3. Cannot be located in any building setback area

4. Provide for one additional standard covered or uncovered on-site parking space

Criterion 1

The structure that will become the second residential unit is presently the primary residential unit and is not an accessory structure. Upon completion of the proposed new primary and the implementation of conditions (details to follow), the existing residential structure becomes the second residential unit accessory to a single-family dwelling; and, therefore conforms to first criterion of Section 7-9-146.5.

Staff also notes that Zoning Code Section 7-9-136.3 permits the use of the proposed second residential unit to continue to be used as a dwelling unit while the new primary dwelling unit is being constructed. This section stipulates that the existing residential unit be converted to a permitted use once the new dwelling is ready for occupancy. Approval of this Use Permit with the recommended conditions of approval satisfies that stipulation.

Criterion 2

The Planning Application as submitted stated that the proposed second residential unit was 1,185 square feet in area. The site plan shows an addition to the dwelling referred to on the site plan an “enclosed porch” or “lanai” with an area of 258 square feet. After a site visitation it was determined that this “lanai” area was actually habitable living space. This area is a dinning room separated from the kitchen area only by a pony wall (half height wall used as a room divider). There is no door between the kitchen area and the dinning room as shown on the site plans. As such, the total habitable living area of the proposed second residential unit as currently constructed is in excess of 1,400 square feet, which is 20 percent greater square footage than permitted by the Zoning Code.

After telephone and on site conversations with the applicant, the applicant agreed to convert the “enclosed porch/lanai” (used as a dinning room) into non-habitable living space. This will require the applicant to make substantial changes to the existing structure. Staff discussed the project with Building Permit Services staff. They indicated that converting the habitable area to non-habitable area would include, but not be limited to, providing a full height exterior wall and door between the proposed second dwelling unit and the existing dining room area, providing additional window space and/or window screening to the exterior sides of the structure, and disconnecting the heating and cooling ducts between the habitable living area and the modified non-habitable living area. Provided this habitable dining room area is modified to meet building code standards for non-habitable living space, the proposed second residential unit would conform to the maximum size limit permitted by the Zoning Code.

In order to insure that the required modifications take place and the proposed second residential unit does not exceed 1,200 square feet of habitable living space, staff is recommending Conditions of Approval numbers 7 and 8 as follows:

7. The proposed second residential unit may be used as a temporary primary residential unit until a use and occupancy permit is issued for the new primary residential unit. The proposed

second residential unit shall be modified so as not to exceed a maximum of 1,200 square feet of habitable living area in a manner meeting the approvals of the Managers of Building Permits and Current Planning Services Division.

8. A. Prior to the issuance of a use and occupancy permit for the new primary residential dwelling, the applicant shall submit documentation meeting the satisfaction of the Manager, Current Planning Services Division that a building permit has been approved to convert the existing enclosed porch/lanai area (dining room) on the second residential unit from habitable living area to non-habitable living area (as determined by the Manager, Building Department).

B. Within 60 days from the date of issuance of a use and occupancy permit for the new primary residential dwelling, the applicant shall submit documentation meeting the satisfaction of the Manager, Current Planning Services Division that a building permit has been finalized for the conversion of the existing enclosed porch/lanai area on the second residential unit from habitable living area to non-habitable living area.

C. Failure to reduce and maintain the habitable living area of the proposed second residential unit to a maximum of 1,200 square feet as provided for by this permit, shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

Staff is of the opinion that with the two conditions above addresses the maximum size for a second residential unit and the project will conform to Zoning Code Sections 7-9-146.5 and 7-9-136.3, which serves as the basis for this project approval, and therefore will conform to the size criterion.

Criterion 3

The project site is zoned E4 “Small Estates” which requires a rear yard setback of 25 feet and a side yard setback of 20 feet (10% of the average lot width to a maximum of 20 feet). Assuming the front property line is along Lomita, the proposed second residential unit is setback in excess of 50 feet from the rear property line and 20 feet-7 inches from the side property line. The proposed second residential unit conforms to the setback criterion.

Criterion 4

The existing dwelling has a two-car garage. This garage is to remain with the proposed second residential unit. Therefore, the project conforms to the one additional parking space criterion.

CONCLUSION:

Only by the applicant’s acceptance and faithful execution of the recommended conditions limiting the maximum habitable square footage of the second residential unit to 1,200 square feet can staff support this Use Permit request. Staff would not want to set a precedent of allowing a second residential unit with over 1, 200 square feet of habitable area. It has been the Planning staff’s policy not to recommend approval of any second residential units that did not conform to the standards contained in Zoning Code Section 7-9-146.5. With this in mind, staff makes a recommendation as follows.

RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA01-0113 for Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief
CPSD/Site Planning Section

WVM

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APPENDICES:

- A. Recommended Findings
- B. Recommended Conditions of Approval

EXHIBITS:

1. Applicant's Letter of Explanation
2. Site Photos
3. Site Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the Planning and Development Services Dept.